

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

EDGAR REED, III

VS.

GARY JOHNSON

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C.A. NO. C-06-71

MEMORANDUM AND RECOMMENDATION
ON PETITIONER'S MOTION TO PROCEED *IN FORMA PAUPERIS*

Petitioner is a state inmate currently incarcerated at Garza East Transfer Facility who has filed a habeas petition pursuant to 28 U.S.C. § 2254. He has filed an application to proceed *in forma pauperis* in this proceeding. (D.E. 3).

Petitioner's application indicates that he has currently \$732.49 in his inmate trust account. (D.E. 2). Furthermore, there are no holds on his account. Id. at 2. Over the past six months, petitioner has received deposits in the amount of \$1,083.64. Id. In his declaration, swore that the current balance of his inmate trust account is \$725. Id. at 1. Moreover, he indicated that he receives \$40 per month from home and that he has five dependents. Id. The filing fee for a habeas corpus petition is \$5.00.

It is respectfully recommended that petitioner be found not indigent and that his application to proceed *in forma pauperis*, (D.E. 2), be denied. It is further

respectfully recommended that petitioner be instructed to pay the filing fee within twenty (20) days of the date of entry of any order adopting this memorandum and recommendation, or voluntarily dismiss the petition. Finally, it is respectfully recommended that petitioner be advised that failure to pay the fee within the time period proscribed may result in dismissal of his petition for failure to prosecute.

ORDERED this 15th day of February 2006.



BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within **TEN (10) DAYS** after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to 28 U.S.C. § 636(b)(1)(C); Rule 8(b)(3), Rules Governing § 2254 Cases; Rule 72(b) of the Federal Rules of Civil Procedure; and Article IV, General Order No. 02-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendations in a magistrate judge's report and recommendation within TEN (10) DAYS after being served with a copy shall bar that party, except upon grounds of *plain error*, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996) (en banc).